

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

PHILLIP J. LYONS,

Petitioner,

vs.

BRIAN WILLIAMS, *et al.*,

Respondents.

2:10-cv-01342-RLH-LRL

**ORDER**

This is a closed habeas corpus action. On August 11, 2010, this court denied petitioner's application to proceed *in forma pauperis* and ordered him to pay the \$5.00 filing fee. (ECF No. 2). On October 28, 2010, this court entered an order dismissing the habeas petition without prejudice for petitioner's failure to obey the court's order to pay the filing fee. (ECF No. 3). Judgment was entered on October 29, 2010. (ECF No. 5). Petitioner filed a motion to vacate judgment. (ECF No. 6). On May 10, 2011, this court denied petitioner's motion to vacate judgment. (ECF No. 11). Petitioner filed a notice of appeal. (ECF No. 12).

In an order dated February 16, 2012, the United States Court of Appeals for the Ninth Circuit summarily vacated this court's May 10, 2011 order denying petitioner's motion to vacate judgment and remanded the matter for further consideration. (ECF No. 21). The Court of Appeals issued its

1 mandate on March 9, 2012. (ECF No. 22). On March 13, 2012, this court issued an order that the  
2 mandate be spread upon the records of this court. (ECF No. 24).

3 This court now makes further rulings consistent with the February 16, 2012 order of the  
4 Court of Appeals. Petitioner's motion to vacate judgment was supported by a declaration stating that  
5 he submitted a request to prison officials for \$5.00 to be paid from his inmate trust account. The  
6 motion was also supported by a copy of his inmate trust account showing that \$5.00 was deducted  
7 from his account on August 26, 2010 and sent the court. (ECF No. 6). It does not appear that the  
8 \$5.00 payment ever reached this court. As such, petitioner's motion to vacate judgment is granted  
9 and the court directs the clerk of court to reopen this action, as specified at the conclusion of this  
10 order.

11 The petition shall now be filed and served on respondents. A petition for federal habeas  
12 corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include  
13 such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that  
14 claim. *See* 28 U.S.C. §2254(b) (successive petitions).

15 **IT IS THEREFORE ORDERED** that the Clerk of Court **SHALL REOPEN** this action.

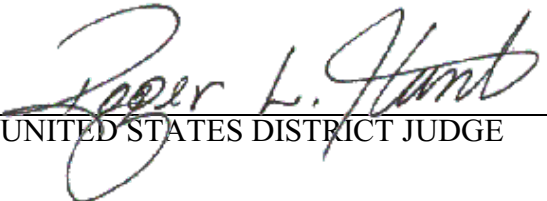
16 **IT IS THEREFORE ORDERED** that the Clerk **SHALL ELECTRONICALLY SERVE**  
17 the petition (ECF No. 4) upon the respondents.

18 **IT IS FURTHER ORDERED** that respondents shall have **forty-five (45)** days from entry of  
19 this order within which to answer, or otherwise respond to, the petition. In their answer or other  
20 response, respondents shall address all claims presented in the petition. Respondents shall raise all  
21 potential affirmative defenses in the initial responsive pleading, including lack of exhaustion and  
22 procedural default. **Successive motions to dismiss will not be entertained.** If an answer is filed,  
23 respondents shall comply with the requirements of Rule 5 of the Rules Governing Proceedings in the  
24 United States District Courts under 28 U.S.C. §2254. If an answer is filed, petitioner shall have  
25 **forty-five (45) days** from the date of service of the answer to file a reply.

1       **IT IS FURTHER ORDERED** that any state court record exhibits filed by respondents shall  
2 be filed with a separate index of exhibits identifying the exhibits by number or letter. The hard copy  
3 of all state court record exhibits shall be forwarded, for this case, to the staff attorneys in the **Reno**  
4 **Division** of the Clerk of Court.

5       **IT IS FURTHER ORDERED** that, henceforth, petitioner shall serve upon the Attorney  
6 General of the State of Nevada a copy of every pleading, motion, or other document he submits for  
7 consideration by the Court. Petitioner shall include with the original paper submitted for filing a  
8 certificate stating the date that a true and correct copy of the document was mailed to the Attorney  
9 General. The Court may disregard any paper that does not include a certificate of service. After  
10 respondents appear in this action, petitioner shall make such service upon the particular Deputy  
11 Attorney General assigned to the case.

12       Dated this 20<sup>th</sup> day of March, 2012.

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15       UNITED STATES DISTRICT JUDGE  
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